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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

JAMES RUTHERFORD, an
individual,

Plaintiff,

v.

RED LION INN AND SUITES, a
business of unknown form; BEST
REST, LLC, a California limited
liability company; and DOES 1-10,
inclusive,

Defendants.

Case No. 5:18-cv-02439-AB-SHK

**First Amended Complaint For
Damages And Injunctive Relief For:**

Hon. Judge Andre Birotte, Jr.

- 1. VIOLATIONS OF THE
AMERICANS WITH DISABILITIES
ACT OF 1990, 42 U.S.C. §12181 *et*
*seq.***
- 2. VIOLATIONS OF THE UNRUH
CIVIL RIGHTS ACT, CALIFORNIA
CIVIL CODE § 51 *et seq.***

Complaint Filed: November 19, 2018

Plaintiff, JAMES RUTHERFORD (“Plaintiff”), complains of Defendants
RED LION INN AND SUITES, a business of unknown form; Best Rest, LLC, a
California limited liability company; and DOES 1-10 (“Defendants”) and alleges as
follows:

PARTIES:

1
2 1. Plaintiff is an adult California resident. Plaintiff is substantially limited
3 in performing one or more major life activities, including but not limited to:
4 walking, standing, ambulating, sitting, in addition to twisting, turning, and grasping
5 objects. As a result of these disabilities, Plaintiff relies upon mobility devices,
6 including at times a wheelchair, to ambulate. With such disabilities, Plaintiff
7 qualifies as a member of a protected class under the Americans with Disabilities Act
8 (“ADA”), 42 U.S.C. §12102(2) and the regulations implementing the ADA set forth
9 at 28 C.F.R. §§ 36.101 et seq. At the time of Plaintiff’s visits to Defendant’s facility
10 and prior to instituting this action, Plaintiff suffered from a “qualified disability”
11 under the ADA, including those set forth in this paragraph. Plaintiff is also the
12 holder of a Disabled Person Parking Placard.
13
14

15 2. Plaintiff brings this action acting as a “private attorney general” as
16 permitted under the American with Disabilities Act of 1990 (“ADA”) to privatize
17 enforcement of the ADA without the American tax payer(s) bearing the financial tax
18 burden for such action.

19 3. Defendant Best Rest, LLC, a California limited liability company,
20 owned the property located at 480 S. Redlands Avenue, Perris, CA 92570
21 (“Property”) in May, 2018 and September, 2018.

22 4. Defendant Best Rest, LLC, a California limited liability company, owns
23 the Property currently.

24 5. RED LION INN AND SUITES a business entity form unknown,
25 owned, operated and controlled the business of Red Lion Inn and Suites
26 (“Business”) in May, 2018 and September, 2018

27 6. RED LION INN AND SUITES, a business entity form unknown, owns,
28 operates, and controls the Business currently.

7. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the Property and Business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including Does 1 through 10, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and Does 1 through 10, inclusive, are ascertained.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. ("ADA").

9. This court has supplemental jurisdiction over Plaintiff's non-federal claims pursuant to 28 U.S.C. § 1367, because Plaintiff's UCRA claims are so related to Plaintiff's federal ADA claims in that they have the same nucleus of operative facts and arising out of the same transactions, they form part of the same case or controversy under Article III of the United States Constitution.

10. Venue is proper in this court pursuant to 28 U.S.C. §1391 because the Property which is the subject of this action is located in this district and because Plaintiff's causes of action arose in this district.

FACTUAL ALLEGATIONS

11. Plaintiff went to the Business in May, 2018 and September, 2018 to rent a room.

12. The Business, including the Property, is a facility open to the public, a place of public accommodation, and a business establishment.

13. Parking spaces are some of the facilities, privileges and advantages reserved by Defendants to persons patronizing the Business and Property.

1 14. Unfortunately, although parking spaces were some of the facilities
2 reserved for patrons, there were barriers for persons with disabilities that cause the
3 named facilities to fail as to compliance with the Americans with Disability Act
4 Accessibility Guidelines (“ADAAG”) in May, 2018 and September, 2018, or at any
5 time thereafter up to and including, the date of the filing of this First Amended
6 Complaint.

7 15. Instead of having architectural barrier free facilities for patrons with
8 disabilities, Plaintiff experienced the following at the Business and Property: there is
9 no ADASAD compliant van accessible parking signage at the parking spaces near
10 the main entrance in violation of Section 502.6; the ramp at the accessible parking
11 space access aisle in the rear parking area has a slope of 23% which exceeds the
12 maximum allowed of 8.3% per Section 405.2; the curb ramp at the accessible
13 parking located in the rear projects into the accessible parking space access aisle in
14 violation of Section 406.5 which requires that curb ramps and the flared sides of
15 curb ramps shall be located so that they do not project into vehicular traffic lanes,
16 parking spaces, or parking access aisles; and, the accessible parking spaces serving
17 the main entrance have slopes and counter slopes exceeding 4% at the front parking
18 spaces and 5% at the rear parking spaces where 502.4 prohibits a slope in excess of
19 2%.

20 16. Subject to the reservation of rights to assert further violations of law
21 after a site inspection found *infra*, Plaintiff asserts there are additional ADA
22 violations which affect him personally.

23 17. Plaintiff is informed and believes and thereon alleges that, currently,
24 there are no compliant, accessible Business facilities designed, reserved and
25 available to persons with disabilities at the Business in addition to that alleged *supra*.

26 18. Plaintiff is informed and believes and thereon alleges that Defendants
27 had no policy or plan in place to make sure that the parking spaces were compliant
28 for persons with disabilities and remained compliant prior to May, 2018 and

1 September, 2018.

2 19. Plaintiff is informed and believes and thereon alleges Defendants have
3 no policy or plan in place to make sure that the complaints of violations alleged
4 above are available to persons with disabilities and remain compliant currently.

5 20. Plaintiff personally encountered the above alleged barriers when
6 attempting to access the Business and Property. These inaccessible conditions
7 denied the Plaintiff full and equal access and caused him difficulty, humiliation,
8 frustration and upset.

9 21. As an individual with a mobility disability who at times is dependent
10 upon a mobility device, Plaintiff has a keen interest in whether public
11 accommodations have architectural barriers that impede full accessibility to those
12 accommodations by individuals with mobility impairments.

13 22. Plaintiff is being deterred from patronizing the Business and its
14 accommodations on particular occasions, but intends to return to the Business for the
15 dual purpose of availing himself of the goods and services offered to the public and
16 to ensure that the Business ceases evading its responsibilities under federal and state
17 law.

18 23. As a result of his difficulty, humiliation, and frustration because of the
19 inaccessible condition of the facilities of the Business, Plaintiff did not fully access
20 the Business or Property. However, Plaintiff would like to return to the location
21 given its close proximity to an area he frequents from time to time.

22 24. The defendants have failed to maintain in working and useable
23 conditions those features required to provide ready access to persons with
24 disabilities.

25 25. The violations identified above are easily removed without much
26 difficulty or expense. They are the types of barriers identified by the Department of
27 Justice as presumably readily achievable to remove and, in fact, these barriers are
28 readily achievable to remove. Moreover, there are numerous alternative

1 accommodations that could be made to provide a greater level of access if complete
2 removal were not achievable.

3 26. Given the obvious and blatant violation alleged hereinabove, Plaintiff
4 alleges, on information and belief, that there are other violations and barriers in the
5 site that relate to his disabilities. Plaintiff will amend the First Amended Complaint,
6 to provide proper notice regarding the scope of this lawsuit, once he conducts a site
7 inspection. However, please be on notice that Plaintiff seeks to have all barriers
8 related to their disabilities remedied. See *Doran v. 7-11*, 524 F.3d 1034 (9th Cir.
9 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to
10 have all barriers that relate to his disability removed regardless of whether he
11 personally encountered them).

12 27. Given the obvious and blatant violation alleged hereinabove, Plaintiff
13 alleges, on information and belief, that the failure to remove these barriers was
14 intentional because: (1) these particular barriers are intuitive and obvious; (2) the
15 defendants exercised control and dominion over the conditions at this location, and
16 therefore, (3) the lack of accessible facilities was not an accident because had the
17 defendants intended any other configuration, they had the means and ability to make
18 the change.

19 28. Without injunctive relief, plaintiff will continue to be unable to fully
20 access Defendants' facilities in violation of Plaintiff's rights under the ADA.

21 **FIRST CAUSE OF ACTION**

22 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT OF 1990,**

23 **42 U.S.C. § 12181 et seq.**

24 29. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
25 above and each and every other paragraph in this First Amended Complaint
26 necessary or helpful to state this cause of action as though fully set forth herein.

27 30. Under the ADA, it is an act of discrimination to fail to ensure that the
28 privileges, advantages, accommodations, facilities, goods, and services of any place

1 of public accommodation are offered on a full and equal basis by anyone who owns,
 2 leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a).

3 Discrimination is defined, inter alia, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,
 5 or procedures, when such modifications are necessary to afford
 6 goods, services, facilities, privileges, advantages, or
 7 accommodations to individuals with disabilities, unless the
 8 accommodation would work a fundamental alteration of those
 9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is
 11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 12 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 13 Appendix "D".
- 14 c. A failure to make alterations in such a manner that, to the
 15 maximum extent feasible, the altered portions of the facility are
 16 readily accessible to and usable by individuals with disabilities,
 17 including individuals who use wheelchairs, or to ensure that, to
 18 the maximum extent feasible, the path of travel to the altered area
 19 and the bathrooms, telephones, and drinking fountains serving
 20 the area, are readily accessible to and usable by individuals with
 21 disabilities. 42 U.S.C. § 12183(a)(2).

22 31. Any business that provides parking spaces must provide accessible
 23 parking spaces. 1991 Standards § 4.1.2(5). 2010 Standards § 208. Under the 1991
 24 Standards, parking spaces and access aisles must be level with surface slopes not
 25 exceeding 1:50 (2.0%) in all directions. 1991 Standards § 4.6.2. Under the 2010
 26 Standards, access aisles shall be at the same level as the parking spaces they serve.
 27 Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are
 28 required to be nearly level in all directions to provide a surface for wheelchair

1 transfer to and from vehicles." 2010 Standards § 502.4 Advisory. Specifically, built
 2 up curb ramps are not permitted to project into access aisles and parking spaces. Id.
 3 No more than a 1:48 slope is permitted. Standards § 502.4.

4 32. Here, the failure to ensure that accessible facilities were available and
 5 ready to be used by Plaintiff is a violation of law.

6 33. A public accommodation must maintain in operable working condition
 7 those features of its facilities and equipment that are required to be readily accessible
 8 to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

9 34. Given its location and options, Plaintiff will continue to desire to
 10 patronize the Business but he has been and will continue to be discriminated against
 11 due to lack of accessible facilities and, therefore, seek injunctive relief to remove the
 12 barriers.

13 **SECOND CAUSE OF ACTION**

14 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL**

15 **CODE § 51 *et seq.***

16 35. Plaintiff re-alleges and incorporates by reference all paragraphs alleged
 17 above and each and every other paragraph in this First Amended Complaint
 18 necessary or helpful to state this cause of action as though fully set forth herein.

19 36. California Civil Code § 51 *et seq.* guarantees equal access for people
 20 with disabilities to the accommodations, advantages, facilities, privileges, and
 21 services of all business establishments of any kind whatsoever. Defendants are
 22 systematically violating the UCRA, Civil Code § 51 *et seq.*

23 37. Because Defendants violate Plaintiff's rights under the ADA, they also
 24 violated the Unruh Civil Rights Act and are liable for damages. (Civ. Code § 51(f),
 25 52(a).) These violations are ongoing.

26 38. Defendants' actions constitute intentional discrimination against
 27 Plaintiff on the basis of their individual disabilities, in violation of the UCRA, Civil
 28 Code § 51 *et seq.* Plaintiff is informed and believes and thereon alleges Defendants

1 have been previously put on actual notice that its premises are inaccessible to
2 Plaintiff as above alleged. Despite this knowledge, Defendants maintain the
3 Property and Business in an inaccessible form.

4 **PRAYER**

5 **WHEREFORE, Plaintiff prays that this court award damages provide relief as**
6 **follows:**

7 1. A preliminary and permanent injunction enjoining Defendants from
8 further violations of the ADA, 42 U.S.C. § 12181 *et seq.*, and UCRA, Civil Code §
9 51 *et seq.* with respect to its operation of the Business and Subject Property; **Note:**
10 **Plaintiff is not invoking section 55 of the California Civil Code and is not**
11 **seeking injunctive relief under the Disable Persons Act at all.**

12 2. An award of actual damages and statutory damages of not less than
13 \$4,000 per violation pursuant to § 52(a) of the California Civil Code and \$4,000 for
14 each time he visits an establishment that contains architectural barriers that deny the
15 Plaintiff of full and equal enjoyment of the premises (*Feezor v. Del Taco, Inc.*
16 (2005) 431 F.Supp.2d 1088, 1091.)

17 3. An additional award of \$4,000.00 as deterrence damages for each
18 violation pursuant to *Johnson v. Guedoir*, 218 F. Supp. 3d 1096; 2016 U.S. Dist.
19 LEXIS 150740 (USDC Cal, E.D. 2016);

20 4. For reasonable attorneys' fees, litigation expenses, and costs of suit,
21 pursuant to 42 U.S.C. § 12205; California Civil Code § 52;

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully request a trial by jury on all appropriate issues raised in this First Amended Complaint.

Dated: January 22, 2019

MANNING LAW, APC

By: /s/ Joseph R. Manning Jr., Esq.
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